Via email at **Danielle.West@labor.ca.gov**

March 23, 2026

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RE: Notice of Proposed Rulemaking: Labor Code Private Attorneys General Act of 2004 – OAL Notice file Number Z2026-0121-03

Dear Ms. West,

The undersigned organizations write on behalf California's farmworkers and low-wage workers who will be negatively impacted by the Labor and Workforce Development Agency's ("LWDA") February 6, 2026 Notice of Proposed Rulemaking ("NPR") on the Private Attorneys General Act ("PAGA"). LWDA appears to have ignored its responsibility to the same workers PAGA seeks to protect. The NPR and Initial Statement of Reasons In Support of Regulatory

Action ("Initial Statement of Reasons") failed to address or acknowledge the effect substantive proposed regulations would have on California's workers. They are both inexplicitly silent when it comes to the interests of California's workers. Yet, the NPR and Initial Statement of Reasons references employers' interests and protecting the same.

CRLA Foundation, Worksafe, Pomona Economic Opportunity Center, Santa Clara County Wage Theft Coalition, Legal Aid At Work, CRLA, Inc., and Community Legal Services in East Palo Alto ask that LWDA revisit these regulations with the interests of California's workers in mind. To the extent a proposed rule is not included or addressed, these organizations have no comment.

I. LWDA Assigned the Labor Commissioner's Office to the Cure Hearings But Failed To Address How This Decision Affects the Current Huge Backlog of Wage Claims

In 2024, the Legislature amended PAGA to provide for an administrative cure process at LWDA for employers that employed fewer than 100 employees total during the one-year period before the filing of a PAGA notice. Lab. Code § 2699.3(c)(2). This cure process includes the opportunity for an aggrieved employee to request a hearing within 30 days of LWDA's determination of the adequacy of the employer's cure. *Id*., subsec. (D). LWDA delegated these cure hearings to the Labor Commissioner's Office ("LCO"). Proposed Regs. §17437-17439. However, the NPR and Initial Statement of Reasons failed to address the LCO's huge backlog of wage claims and how LWDA's decision further exacerbates this backlog. In 2023, PAGA generated $209 million in penalties for the LWDA[1] yet the NPR and Initial Statement of Reasons are silent on additional staffing, resources, and priorities for the LCO when the LCO is saddled with a backlog of over 47,000 wage claims.

On May 29, 2024, the California State Auditor issued a report[2] finding that the "LCO is not providing timely adjudication of wage claims for workers primarily because of insufficient staffing to process those claims."[3] Furthermore, the lack of staffing "is exacerbated by the fact that the LCO has a high vacancy rate, and an inefficient and lengthy recruitment process."[4] Per the report, in the 2022-23 fiscal year, the LCO had a backlog of 47,000 claims.[5] It is unknown how much this backlog has increased for the 2025-26 fiscal year but between the 2017-18 and 2022-23 fiscal years, the backlog increased from 22,000 to 47,000 wage claims.[6] Of these 47,000 wage claims, 2,800 claims had been opened for more than 5 years – these claims totaled more than **$63.9 million in unpaid wages**.[7] Even though the Labor Code requires the LCO to issue a

[1] UCLA Labor Center, "A Shrinking Toolbox: The Corporate Efforts to Eliminate PAGA and Limit California Workers' Rights," Feb. 2024, p.6, https://labor.ucla.edu/wp-content/uploads/2024/01/A-Shrinking-Toolbox.pdf.
[2] California State Auditor, "2023-104 The California Labor Commissioner's Office, Inadequate Staffing and Poor Oversights Have Weakened Protections for Workers," May 29, 2024, https://www.auditor.ca.gov/reports/2023-104/.
[3] *Id*.
[4] *Id*.
[5] *Id*.
[6] *Id*.
[7] *Id*.

decision on a wage claim within 135 days after it is filed, workers are waiting three to five years, or more, for a hearing on their wage claims.[8] *See also* Lab. Code § 98.

Consequently, an understaffed and under-resourced LCO would be overseeing two separate hearings to address workers' claims against their employers under specific statutory deadlines. Workers with pending wage claims would now be competing with workers with pending PAGA cases for a hearing. Which worker would be prioritized for a hearing: the worker waiting 3-5 years for a hearing on their wage claim or the worker requesting a hearing on any alleged deficiencies in an employer's cure?

Both the NPR and Initial Statement of Reasons failed to acknowledge this huge backlog and address the impact to the workers who have been waiting three to five years for a hearing. This failure is highly concerning to the undersigned organizations, majority of which represent farmworkers and low-wage workers with wage claims that have been pending for years before the LCO. LWDA is inexplicitly silent when it comes to the interests of California's workers.

II. LWDA's Proposed Notice Requirements Fail to Consider The Reality of Employees' Working Conditions and Are In Part Vague

Regulation section 17420(a) requires workers to file a PAGA notice using "the form prescribed by the Agency" and made available online. Subdivision(b) then requires the worker to serve the PAGA notice on the employer. LWDA explained that this form is meant to standardized PAGA notices "to create a uniform template by which employees can notify the Agency and employers of the alleged Labor Code violations under PAGA."[9]

However, LWDA did not to make the proposed PAGA Notice form available for public comment.[10] It is not clear whether the proposed PAGA Notice form is only including the items listed in subdivision (d) or other fields need to be completed. To clarify, there is no objection to LWDA creating a new form to standardize PAGA notices but the undersigned organizations were not given an opportunity to provide comment on the form. These organizations have advocated for workers' rights for decades and PAGA is one of a handful of tools that allow workers to enforce their rights. Moreover, since the Legislature enacted PAGA, legal aid organizations have been filing PAGA lawsuits and providing notices to both LWDA and employers.

This form should also be made available to the undersigned to provide comments that reflect the reality of employees' working conditions. For example, section 17420(d)(1)[11] requires

[8] *Id.*
[9] Initial Statement of Reasons in Support of Proposed Regulatory Action, p. 25.
[10] The proposed PAGA notice form was not attached to the NPR, Regulations, and Initial Statement of Reasons.
[11] Regulation 17450 also requires workers to provide the "address or a specific description of the location where the claimant worked or works and where the safety and health violations allegedly existed or existed." The undersigned organizations understand why LWDA needs this information but this request should be evaluated based on the employees' working conditions and the possibility they may not have this specific information.

the PAGA notice to include the location or address of the workplace where the employee was employed. This requirement places legal aid organizations representing farmworkers in a bind. Farmworkers can usually only the name the nearest town or city they worked but not the actual location or address of the fields or orchards. They do not usually work in the same field or orchard, some moving through the State working for the same contractor or grower. Farmworkers dependent on *raiteros*[12] or employer-provided transportation especially struggle to identify where they worked, including the nearest town or city. California's agricultural industry is not composed of small family-owned farms, but of commercial agro-business, farming vast areas of land with private dirt roads separating each grower's fields. Once the public highway ends, the grower's land begins. There are no parking lots or public areas. There is no signage or address numbers.

And under section 17415(b) legal aid attorneys who failed to "allege adequately the facts…supporting the violations" may be publicly shamed as a "vexatious filer." The location or address is a factual requirement under the NPR and LWDA may now repeatedly flag legal aid PAGA notices for lacking this information or provide a basis for employers to challenge them in court. Again, neither the worker nor the legal aid attorney would be purposefully withholding this information. They do not have it. Farmworkers are not the only low-wage workers who would struggle to provide this information; any low-wage worker without a fixed-site worksite or dependent on others for transportation to different job sites would similarly struggle to provide it. LWDA's proposed notice requirements should be liberally construed in favor of the workers.

Finally, is not clear how the proposed standardized PAGA form would work and what exactly workers are supposed to serve on the employers. Section 17420(a) provides that workers must use the new form notice to file with LWDA, subdivision (b) provides the worker must serve the notice on the employer, and subdivision (e) requires that either the worker or their attorney to sign the notice. Is this form being provided as a fillable PDF to be separately filed, served, and signed? Or is it a form that is supposed to be completed online and filed online with an electronic signature and then printed and served on the employer? While in theory the proposed regulations make sense, it is not clear how this is going to work in practice without further explanation and guidance.

III. LWDA's Proffered Reasons Do Not Justify The Proposed "High-Frequency" and "Vexatious" Filers Regulations and LWDA Ignored Workers' Interests

LWDA provided mainly two reasons for promulgating its High-Frequency and Vexatious Filers regulation. LWDA states that PAGA Notice requirements are not being followed

[12] *Raitero* "refers to a person (usually a fieldworker) who, for a fee, provides transportation to farmworkers both to and from the worksite." U.S Department of Labor, Wage and Hour Division, "Fact Sheet #50: Transportation under the Migrant and Seasonal Agricultural Worker Protection Act," rev. June 2016, https://www.dol.gov/agencies/whd/fact-sheets/50-mspa-transportation#:~:text=Are%20%E2%80%9CRaiteros%E2%80%9D%20Subject%20to%20MSPA,covered%20workers%20for%20a%20fee).

impeding LWDA's ability to review the notice given the use of templates that "report the same or similar allegations in a conclusory, boilerplate, or frivolous manner."[13] But LWDA's standardized PAGA Notice form and regulation 17420 address the use of any alleged conclusory, boilerplate, or frivolous notices previously filed. Thus, leaving only LWDA's second reason to justify its High-Frequency and Vexatious Filers.

LWDA's second reason for this regulation is that attorneys or law firms responsible for a high volume of PAGA notices do not file or report filing lawsuits, impeding LWDA's ability to monitor lawsuits.[14] However, the remedy does not seem to match the illness.

A. The 200-PAGA Notice Threshold for "High Frequency Filers" Is Arbitrary

LWDA proposes to require any attorney or law firm that has filed 200 or more PAGA notices in the 12-month period proceeding the filing of the PAGA notice to include a cover letter stating that they are a "high frequency-filer." Proposed Regs. § 17415. Although legal aid organizations are exempted from this regulation, due to the lack of sufficient resources and capacity legal aid organizations often co-counsel with private attorneys. Thus, legal aid organizations have an interest in the regulation actually addressing the alleged problem LWDA identified: the lack of lawsuits impeding LWDA's ability to monitor PAGA cases.

LWDA set the threshold for a high-filer as an attorney or firm that filed 200 PAGA notices in a 12-month period. However, LWDA's own evidentiary evidence does not support this 200 mark. Appendix B to the Initial Statement of Reasons shows that eight of the top 25 law firms that filed notices in 2024-2025 had more than 200 PAGA Notices while 17 had less 200 notices filed. The complaint filing rates for these 25 firms ranged from 1% to 90%. Firms below the 200 threshold also had low complaint filing rates, with one having a 1% filing rate. These are the seven firms with the lowest percentage complaint filing rates:[15]

Law Firm	*PAGA Notices Filed*	*Complaints Submitted*	*Percentage of Complaints Submitted*
Law Firm 3	409	63	15%
Law Firm 5	230	10	4%
Law Firm 6	222	5	2%
Law Firm 11	159	18	11%
Law Firm 17	125	2	1%
Law Firm 19	119	17	14%
Law Firm 25	87	14	16%

This shows that 200 as a threshold is an arbitrary number not supported by LWDA's own evidence. Law Firm 17 could continue with a 1% complaint filing rate without consequence

[13] Initial Statement of Reasons, p. 5.
[14] *Id*. p. 6.
[15] Appendix B did not include the rate of filing but it has been included in this chart.

because its PAGA notices do not meet the 200 threshold, which is absurd since LWDA seeks to curve this practice. This is compounded by the fact that this 200 threshold does not take into account a law firm's experience, resources, staffing levels, and co-counseling between firms and legal aid organizations.

B. LWDA's "Vexatious Filer" Is Vague and A Disproportionate Designation

Under section 17415 legal aid organizations can be designated as a "vexatious filer" for "repeatedly" filing PAGA notices that "do not comply with the legal requirements," including failing to "allege adequately the facts" supporting the violations. LWDA has not provided any evidence that legal aid organizations have filed any alleged non-compliance notices maliciously, without support, or intended to harass. LWDA is now enacting specific notice requirements and a standardized form and, as discussed above, at least one of these notice requirements fails to consider farmworkers' working conditions and their potential inability to identify locations or addresses of worksites. If LWDA requires strict compliance and reading of these notice requirements, legal aid organizations may designated as "vexatious filers" even if they attempted to comply. They would have to expand limited resources meant to be used to protect and enforce workers' rights defending themselves so that they are not labelled as "vexatious filers," a term that has serious legal connotations associated to it. Crucially, legal aid organizations would have to wait six months to request that this designation be removed. They should be able to request that this designation be removed under an earlier timeline.

LWDA cites to Civil Code Section 391 in support for using the term "vexatious" in this regulation. But regulation 14715 does not provide the same due process and protections provided by section 391. Section 391(b)(1), for example, specifically provides that a person can be designated as "vexatious litigant" if during a seven-year period a person has prosecuted at least 5 litigations that have been finally determined adversely to the person or unjustifiably permitted to remain for at least two years without having brought a trial or hearing. But section 17415 does not define "repeatedly" – is it two, three, ten instances? There is no prior notice being provided to the filer that their PAGA notice is non-compliant with the opportunity correct. Instead, LWDA would arbitrarily determine what is "repeatedly" and schedule a hearing.

Finally, any notice to a person or attorney that they may be designated as a "vexatious filer" should also be sent to the law firm or legal aid organization where the attorney is employed. LWDA's plan to apply prescreening requirements on an organization based on the conduct of one attorney without notice to the organization fails to provide the legal aid organization and law firm procedural due process.

C. LWDA Failed to Consider this Regulation's Consequence to Workers

LWDA in its pursuit to protect employers has left workers on the sidelines. Nowhere does LWDA address the consequences that would befall to a worker, especially a worker who filed a PAGA notice against their current employer, when *they* are refer to as the "high-

frequency filer" or "vexatious filer." Not their attorneys but the worker themselves. Nor does LWDA address how employers can use this regulation, especially the cover letters, to tell workers that the LWDA has already marked workers' claims for *valid* labor code violations as potentially frivolous. LWDA's intent may have been to shame publicly attorneys and firms but it will be the workers holding the bag. After all, it is the workers' name in the letter and it is the worker the employer's workforce had or has a relationship with – not some attorney none of the workers have heard about.

California low-wage workers and farmworkers fear losing their jobs given the economic coercion they live in. They cannot afford to lose their job because that affects their ability to keep a roof over their head, food on the table, or pay for school supplies for their children. LWDA should not give employers another tool to silence workers or to label any worker's claims as potentially frivolous or meritless.

If the issue that LWDA seeks to address is lawsuits not being filed for all PAGA notices and PAGA notices being allegedly used as bargaining chips, there other ways LWDA could do this. For example, LWDA's proposed PAGA Notice form could include a notice to employers that the violations alleged in the PAGA notice can only be settled under LWDA's oversight[16] or must be approved by a Court. Any notice should also advise that this does not include workers' individual claims; it only covers PAGA claims.

IV. LWDA Should Promulgate Additional Requirements For Employers' Cure When The PAGA Notice Involves Claims for Unpaid Wages

Regulation section 17430(c) requires employers to provide LWDA with the total number of employees the employer employed during the one-year period before a PAGA Notice. LWDA understandably is requesting this information to determine when the employer meets the small employer cure requirements. Under Labor code section 2699(d), employers seeking to cure unpaid wages are required to pay an amount sufficient to cover any unpaid wages due for the past three years from the date of the notice. Employers should be required to provide LWDA and the worker, when appropriate, with the total number of workers employed each year for the past three years separated by exempt and non-exempt employees. This would allow the claimant to better assess the extent of the employer's cure as it relates to unpaid wages, interest, and liquidated damages.

LWDA should require employers that pay unpaid wages, interest, and liquidated damages as part of the cure to provide a notice to employees. LWDA should create a standardize form for employers to use to notify workers about the following:

1) The case number assigned to the PAGA notice;
2) The reason the employee is receiving a payment for unpaid wages;

[16] This refers to the small employer cure.

3) A breakdown of the amount paid, i.e., what amount constitutes unpaid wages; interest; and liquidated damages; and
4) If the employee disputes the amount paid or is being required to give the money back to the employer, that the worker may contact LWDA at designated phone line and email address.

This notice should be provided in writing in English and in the workers' native language, to the extent the worker cannot read and write in English. The notice should be included with any payment provided to the worker.

Moreover, to the extent an employer's cure proposal would resolve the wage claims of any workers' pending claims before the LCO, the employer should notify LWDA and provide LWDA with the worker's name and any case number assigned to any claim. Employees with a pending wage claim should be notified of the possibility that their claim could be separately resolved potentially extinguishing their LCO claim, if that is the case.

Finally, to the extent, there are any uncashed checks or workers do not claim their money before any checks expire, for instance, the regulations do not specify what happens to these funds. For example, is the employer supposed to transfer these funds to the State Controller's Office unclaimed property division or another a fund managed by the State? How long does an employer have to wait before transferring unclaimed funds? Given that the cure covers three years of unpaid wages and depending on employee turnover, employees may have changed jobs and/or residence. A purpose of PAGA's cure provisions is to make employees whole for lost wages; thus, there should be procedures in place to make sure employees receive and access payment for their unpaid wages, interest, and liquidated damages.

V. The Cure Conferences and Hearings Should Permit Claimants To Join Via Phone Call Regardless of the Format of the Hearing

Regulation sections 17432 (cure conference) and 17438 (cure hearing) provides that the hearing can be conducted in person, videoconference, or teleconference with the parties having the ability to request a different format. Sections 17434(b)(2) and 17437(g) require the claimant to appear both at the cure conference and cure hearing, absent good cause. To allow workers easier access to this conference and hearing, they should be allowed to join the conference or hearing via phone regardless of the format. The assumption might be that the worker would be able to join remotely with their attorney but this is not possible for all H-2A workers and migrant farmworkers who travel to other states following the harvest or return to Mexico during the off-season.

In recent years, California has seen a sharp increase of farmworkers from other countries entering the State under an H-2A visa.[17] H-2A workers' employment and lawful non-immigrant status is linked to their specific employer and they must return to their country once the season is over. "The employer decides which workers get to come to the U.S., whether a worker may remain in the U.S., and often, whether the worker will have the opportunity to return to the U.S. in future years."[18] In 2023, California had the second largest number of H-2A workers nationwide.[19] By the time the conference or hearing is schedule, the H-2A worker may have returned to Mexico, for example, is unable to return to the U.S., and in an area without reliable internet to join the hearing or conference remotely. The same applies for a migrant farmworker in a different state or who has returned to Mexico is unable to return to California. The format of the hearing itself need not change.

Moreover, internet access and data are a cost-prohibitive luxury for many farmworkers and low-wage workers and many are not technology literate to join hearings remotely. In 2015, the Agricultural Labor Relations Board ("ALRB") held a series of hearings to gather information about farmworkers in California, including their knowledge of their rights, accessibility, and demographics.[20] In this report, the ALRB found farmworker cellphone ownership is very high but internet access and data are a cost-prohibitive luxury for many of them.[21] In 2023, the annual mean salary for California's farmworkers was $36,670.[22] The ALRB found that workers use "their wages to pay rent, to pay for food, to send to Mexico or for the doctor, after that they don't have money for the internet."[23] Only about one-third of California rural households subscribe to internet service.[24] Even if California farmworkers had access to data or the internet, they lack the literacy necessary to use computers or smart phones to join conferences remotely.[25]

Finally, this was not addressed in the NPR or the Initial Statement of Reasons but LWDA should consider that other current or former workers of the employer may want attend the cure

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[17] The H-2A visa program allows employers to bring in temporary farmworkers if they can demonstrate a shortage of U.S.-based farmworkers. 8 U.S.C. § 1188.
[18] Mary Bauer & Maria Perales Sanchez, *Ripe for Reform: Abuses of Agricultural Workers in the H-2A Visa Program*, Centro de Los Derechos del Migrante, Inc. (2020), https://cdmigrante.org/wp-content/uploads/2020/04/Ripe-for-Reform.pdf ("Ripe for Reform").
[19] U.S. Dept. of Lab., Office of Foreign Labor Certification, H-2A Temporary Agricultural Program – Selected Statistics, Fiscal Year (FY) 2023, https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2A_Selected_Statistics_FY2023_Q4.pdf.
[20] Memorandum of Thomas Sobel, Administrative Law Judge, & Eduardo Blanco, Special Legal Advisor, on Staff Proposal for an Education Access Regulation for Concerted Activity to the Bd., p. 3 (Nov. 23, 2015), https://www.alrb.ca.gov/wp-content/uploads/sites/196/2018/06/StaffRecommendationWorksiteAccess.pdf ("Board Memo").
[21] *Id.* at p.10.
[22] Occupational Employment and Wages, May 2023, 45-2092 Farmworkers and Laborers, Crop, Nursery, and Greenhouse, https://www.bls.gov/oes/2023/may/oes452092.htm.
[23] Board Memo at p. 5.
[24] Johnson, Sydney, *Why internet stops once school ends for many rural California students*, PBS NewsHour (Dec. 31, 2019), https://www.pbs.org/newshour/education/why-internet-stops-once-school-ends-for-many-rural-california-students (accessed Feb. 8, 2021).
[25] Board Memo at pp. 10-12.

hearing. The hearing should be accessible to them as well. After all, LCO & LWDA are considering employer cure proposals that affect their payment of wages and working conditions.

VI. Conclusion

For the reasons stated above, we ask that LWDA review the proposed regulations considering workers' interests and working conditions. Moreover, LWDA should consider the effects these proposed regulations have on workers' claims for unpaid wages and their working conditions.

We would like our comment, including any articles, studies, or other supporting materials that we have included in our comment as an active link in the text, to be included as part of the formal administrative record for the proposed regulations. Please let us know if LWDA is unable to open any linked materials, so we will have a chance to otherwise submit copies of the supporting documents into the record.

Sincerely,

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